

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BILLY BRANTLEY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. C-1-01-378
)	Judge Michael H. Watson
CINERGY CORP.,)	
)	
Defendant.)	

AFFIDAVIT OF SUSAN DONAHUE

Pursuant to 28 U.S.C. § 1746, Susan Donahue states the following:

1. I am one of the counsel for the Plaintiffs in the above-referenced matter.
2. On December 13, 2004, using this Court's electronic filing system, I filed Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Strike; or, in the Alternative, Motion to File Surreply, which is now docketed as Reply to Response to Motion re Motion to Strike Affidavits and Declaration (Doc no. 116). This filing appears on the docket with the notation "Modified on 12/14/2004 (ph.)."
3. On December 14, 2004, I received a phone call from Paul Hennessey, the Docketing Clerk for this Court. Mr. Hennessey informed me that because my filing of December 13, 2004 contained both a Reply and an alternative Motion, the Court's electronic filing system would be confused and the Motion would not be recognized by the system as a motion. This, he said, could cause additional problems as Judge Watson would not be adequately notified that this motion was on his docket.
4. Mr. Hennessey suggested that to remedy the problem I file the same document that

I had already filed on December 13, 2004, again on December 14, 2004, but this time with the title of "Motion for Leave to File Surreply." He said he would correct the docket entry to indicate that my first filing was the Plaintiffs' "Reply to Response to Motion to Strike Affidavits and Declaration. (Doc no. 116), and that my second, identical filing would be entered as a "Motion for Leave to File Surreply" (Doc. no. 117).

5. After receiving these instructions from Mr. Hennessey, I re-titled my December 13th filing with the heading "Motion for Leave to File Surreply" and electronically re-filed it with this Court. The Motion for Leave to File Surreply (Doc no. 117) was entered on the docket on December 14, 2004. This motion is identical to the filing I made on December 13, 2004, (Doc. no. 116), except that the heading has been changed pursuant to the instructions from Mr. Hennessey.


6. On December 21, 2004, Defendant filed a Response in Opposition re Motion for Leave to File Surreply and Motion to Strike Motion for Leave to File Sur-Reply (Doc. no. 118), charging Plaintiffs with filing a "redundant, immaterial and scandalous" motion in violation of Fed. R. Civ. Pro. 12(f).

7. Based on the above and foregoing explanation, it is obvious that the Plaintiffs' Motion for Leave to File Surreply could not fairly be held to be in violation of Fed. R. Civ. Pro. 12(f).

8. The affiant has first-hand knowledge of the above.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

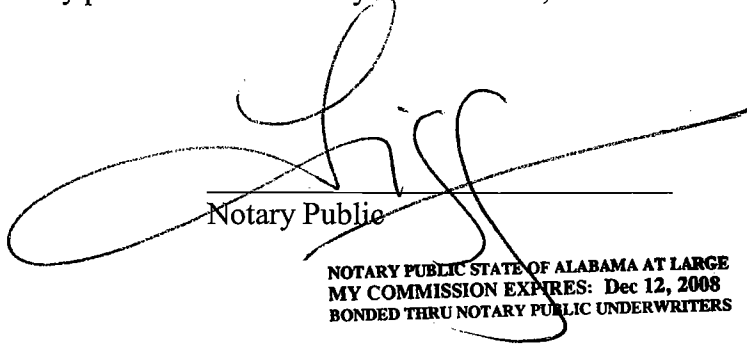
EXECUTED ON December 28, 2004.



Susan Donahue

NOTARY PUBLIC

Sworn to and subscribed in my presence this 28th day of December, 2004.



Notary Public
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 12, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Respectfully submitted,



Susan Donahue

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2004, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification to:

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